

TITLE: Whistleblower, Non-Retaliation and Non-Intimidation Policy

APPLIES TO: VNSNY Entities

PREPARED BY: Corporate Compliance

APPROVED: October 21, 2011; November 18, 2013; June 24, 2014

PURPOSE: In furtherance of the Compliance Program, Code of Conduct and the requirements of § 715-b of the New York Non-Profit Revitalization Act of 2013 (the “NPRO”), the purpose of this Policy is to ensure that all personnel of VNSNY and its family of corporations (collectively, “VNSNY”)¹ understand that VNSNY encourages the good faith reporting of conduct or suspected conduct by or within VNSNY that is illegal, fraudulent or in violation of any adopted policy or Code of Conduct of VNSNY, or any compliance concern arising therefrom, and prohibits any retaliation and intimidation in response to good faith reports of such conduct, suspected conduct or compliance concerns, as described in detail below.

A. DEFINITIONS:

Affiliate. The term “Affiliate” means any entity controlled by, in control of, or under common control of VNSNY.

Audit Committee of the Board. The term “Audit Committee of the Board” means the Audit Committee of the Board of Directors of the Visiting Nurse Service of New York.

Intimidation generally means any action that is reasonably likely to manipulate an individual or intentionally cause feelings of fear or inadequacy. It is not easy to define exactly what kinds of actions or course of conduct may constitute intimidation in any particular instance, because it will depend on the specific facts and circumstances.

Retaliation generally means any adverse action against an individual because of the individual’s good faith report of a compliance concern, participation in the Compliance Program, or other report of suspected improper conduct. An **adverse action** includes, without limitation:

- (i) Termination, demotion, suspension, refusal to hire, and denial of training and/or promotion;
- (ii) Actions affecting employment or contractual relationships such as threats, harassment, discrimination, unjustified negative evaluations, unjustified negative references, or increased surveillance or scrutiny; or

¹ As used in this Policy, the term “VNSNY” includes Visiting Nurse Service of New York and each Affiliate (as defined herein) thereof, including: Visiting Nurse Service of New York Home Care, VNSNY Hospice & Palliative Care, Partners In Care, VNSNY CHOICE, VNS CHOICE Community Care and VNS Continuing Care Development Corporation.

- (iii) Any other actions that are likely to deter a reasonable individual from reporting illegal conditions, violations of law, rules, policies, or procedures, cooperating in/with an investigation, and/or otherwise participating in the Compliance Program.²

Good faith participation or reporting includes, but is not limited to:

- (i) **reporting** actual or potential issues or concerns, including, but not limited to, any action or suspected action taken by or within VNSNY that is illegal, fraudulent or in violation of any adopted VNSNY policy;
- (ii) cooperating or participating in the **investigation** of such matters;
- (iii) assisting with or participating in **self-evaluations, audits and/or remedial actions**; or
- (iv) **reporting to appropriate officials** as provided in New York State Labor Law §§ 740-741.³

B. POLICY:

In furtherance of the Compliance Program and Code of Conduct, VNSNY and VNSNY CHOICE's First Tier, Downstream and Related Entities ("FDRs") are committed to maintaining compliance with all laws and regulations that apply to the conduct of their various businesses, services and operations. All personnel, including, but not limited to, all employees, contractors, vendors, volunteers, officers and Board and Board committee members, as well as others associated with VNSNY, including FDRs, are expected to report any actual or potential compliance issues or concerns and assist in their investigation and resolution. Issues or concerns should be reported to (i) the VNSNY Vice President of Compliance and Regulatory Affairs ("VP of Compliance"), (ii) the VNSNY Director of Compliance and Regulatory Affairs ("Director of Compliance"), and/or (iii) the VNSNY CHOICE Director of Compliance ("VNSNY CHOICE Director of Compliance"), as appropriate under the circumstances.

The adoption and implementation of, and compliance with, this Policy shall be overseen by the Audit Committee of the Board of Directors of VNSNY. The Audit Committee has authorized certain functions relating to the implementation of, and compliance with, this Policy to the VP of Compliance, but the Audit Committee of the Board will, at all times, retain overall responsibility for of the oversight of this Policy.

No director, officer, employee or volunteer of VNSNY who in good faith reports any conduct or suspected conduct by or within VNSNY that is illegal, fraudulent or in violation of any adopted policy of VNSNY shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence(s).

Intimidation of, and/or retaliation against, anyone who in good faith participates in the VNSNY Compliance Program (the "Compliance Program") or who in good faith reports actual or potential issues or concerns, including but not limited to potential Fraud, Waste or Abuse

² Adverse action(s) do not include any employment action(s), disciplinary action(s), and termination(s) taken as a result of an individual's own violation(s) of laws, rules, policies, or procedures, or negative comments in an otherwise positive or neutral evaluation, or negative comments that are justified by the individual's poor work performance or history.

³ For a brief summary of New York State Labor Law §§ 740-741, and certain federal "whistleblower" laws as of May 21, 2014, please see Appendix 1 attached to this Policy.

("FWA") - in any form - is strictly prohibited and is itself a violation of the Compliance Program and the VNSNY Code of Conduct (the "Code of Conduct").

C. PROCEDURES FOR REPORTING VIOLATIONS OR SUSPECTED VIOLATIONS OF LAWS OR VNSNY POLICIES:

1. Full and Complete Investigation. All allegations of intimidation of, and/or retaliation against, anyone who in good faith participates in the Compliance Program, or who in good faith reports any actual or potential issues or concerns (including, but not limited to, potential FWA), will be fully and completely investigated. Appropriate disciplinary and corrective action will be promptly undertaken. The VP of Compliance or her/his designee will oversee the investigation, and will be assisted by internal and external personnel. If an individual has a concern regarding a member of the Compliance Department and is not comfortable addressing the matter with the VP of Compliance, the individual may raise the concern to Human Resources, and Human Resources will investigate the allegation. For each allegation, investigative steps and actions may include, but need not be limited to, the following:

- **Interviews:** Prompt interviews of individuals who may have relevant knowledge. At the outset of the interview process, the interviewee will be reminded that intimidation of, and/or retaliation against, those who participate in good faith in the Compliance Program or who in good faith report actual or potential issues or concerns is a violation of VNSNY policy, the Compliance Program and the Code of Conduct. The interviewee will also be reminded of VNSNY's Compliance Program Disciplinary Policy, Standards and Procedures.
- **Confidentiality:** All reported information will be kept confidential, consistent with the need to investigate the issue(s) raised.
- **Document Review:** Review of hard copy and electronic materials that may include relevant information. Documents collected will be maintained by the VP of Compliance, or her/his designee.
- **Document Retention:** All documentation related to the investigation will be treated as confidential to the extent possible and will be maintained by the VP of Compliance or her/his designee. Such investigative files will be kept separately from personnel files. All investigative files (including files relating to the imposition of disciplinary sanctions and/or corrective actions) shall be maintained for no fewer than ten (10) years from the date of the conclusion of the investigation or the imposition of disciplinary sanctions or corrective actions resulting therefrom, or for such longer period of time as may be required by applicable law.
- **Disciplinary Action:** If, as a result of the investigation, VNSNY determines that there was intimidation of, and/or retaliation against, anyone or any entity who/which in good faith participated in the Compliance Program or reported actual or potential issues or concerns (including, but not limited to, FWA), then, in consultation with Human Resources, appropriate disciplinary sanctions will be taken promptly against the offender(s), without regard to their title or position

at VNSNY. Such disciplinary sanctions will be imposed in accordance with the Human Resources Guidelines for Disciplinary Action.

- **Corrective Action:** If, as a result of the investigation, VNSNY determines that there has been intimidation of, and/or retaliation against, anyone who in good faith participated in the Compliance Program or who in good faith reported actual or potential issues or concerns, VNSNY will take prompt and appropriate corrective action which may include, but need not be limited to, removal of a negative evaluation from an employee's personnel record, promotion to a position to which the employee sought and was entitled, reinstatement of the individual to the same or an equivalent position, reinstatement of full fringe benefits and seniority, and/or repayment of lost wages and benefits. In a case involving an independent contractor or FDR, or other person or entity who has been intimidated or retaliated against, such corrective action may include, but is not necessarily limited to, reinstating contracts or other affiliations or relationships with VNSNY.
- **Additional or Different Steps:** Additional or different investigative steps and resulting actions may be taken, as necessary, appropriate and permissible, depending on the particular facts and circumstances of the matter involved and/or the results of the investigation relating thereto.

2. **Periodic Reporting by the VP of Compliance to the CEO and the VNSNY Audit Committee of the Board.** The VP of Compliance shall report to the Chief Executive Officer and the Audit Committee of the Board on matters concerning violations and alleged violations of this Policy, both on a periodic and as needed basis. In addition, the VP of Compliance shall report on the same to each of the respective VNSNY Boards.

3. **Reporting Instances of Retaliation and/or Intimidation at VNSNY.** Instances of retaliation and/or intimidation at VNSNY may be reported to:

- The VP of Compliance, Randi Erin Seigel, at (212) 609-1546 or Randi.Seigel@vnsny.org;
 - The VNSNY Director of Compliance and Regulatory Affairs, Annie Miyazaki, at (212) 609-7470 or Annie.Miyazaki@vnsny.org; or
 - The VNSNY CHOICE Director of Compliance, Joel Levi, at (212) 946-9100 or Joel.levi@vnsny.org; or
 - anonymously via the VNSNY CHOICE Compliance Hotline at (888) 634-1558 or the VNSNY Compliance Hotline at (212) 290-4773 or the VNSNY Online Reporting Tool: www.vnsny.ethicspoint.com.
- Personnel may also elect to report instances of retaliation and/or intimidation directly to the New York State Office of the Medicaid Inspector General at (518) 473-3782. Depending on the circumstances, reporting to other government agencies (e.g., the Office of Inspector General) may also be appropriate.

➤ Personnel may also elect to report instances of VNSNY CHOICE retaliation and/or intimidation directly to the National Benefit Integrity Medicare Drug Integrity Contractor at 1-877-7SafeRX (1-877-772-3379). Depending on the circumstances, reporting to other government agencies (e.g., the Office of Inspector General) may also be appropriate.

4. **Distribution.** This Policy shall be distributed to all directors, officers and employees of VNSNY, and to volunteers who provide substantial services to VNSNY.

REVIEWED: October 2013, November 18, 2013, May 2014

REVISED: November 18, 2013, May 2014

POLICY OWNER: VP of Compliance and Regulatory Affairs

REFERENCES: See attached Exhibit.

APPENDIX 1

A BRIEF SUMMARY OF NEW YORK STATE LABOR LAW §§ 740 AND 741, AND FEDERAL WHISTLEBLOWER LAWS⁴

A. New York State Whistleblower Laws.

New York State Labor Law (“NYLL”) §§ 740 and 741 are laws that provide protection to “whistleblowers” in certain cases.

In general terms, NYLL § 740 prohibits retaliatory action, including discharge, suspension, demotion or other adverse employment action, by an employer against an employee if the employee: (a) discloses or threatens to disclose to a supervisor or to a public body (broadly defined in the law to include various legislative, judicial, regulatory, administrative, public and law enforcement bodies, members, employees and officials) an activity, policy or practice of the employer that is in violation of a law, rule or regulation which creates and presents a substantial and specific danger to the public health or safety, or which constitutes “health care fraud” (as defined under the New York Penal Law), (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the employer, or (c) objects to, or refuses to participate in, any such activity, policy or practice.

In general terms, NYLL § 741 prohibits a health care employer from taking retaliatory action, including discharge, suspension, demotion, penalization, discrimination or other adverse employment action, against any employee if the employee: (a) discloses or threatens to disclose to a supervisor or to a public body (broadly defined in the law to include various legislative, judicial, regulatory, administrative, public and law enforcement bodies, members, employees and officials, as well as executive branch departments and any division, board, bureau, office, committee or commission of such bodies) an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care, or (b) objects to, or refuses to participate in, any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

Under both laws, an employee is protected only if he/she first brings the matter to the attention of a supervisor and gives the employer a reasonable opportunity to correct the activity, policy or practice. However, prior disclosure to a supervisor is not required if the matter involves a disclosure or threat to disclose an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care that presents an imminent threat to public health or safety or to the health of a specific patient, and the employee reasonably believes, in good faith, that reporting to a supervisor would not result in corrective action.

If retaliatory action is taken by an employer, the employee may sue in accordance with the respective laws’ requirements. The employee may sue for, among other things, an injunction, reinstatement to the same or an equivalent position, reinstatement of full fringe benefits and seniority rights, lost wages, benefits and other remuneration, and reasonable costs, disbursements and attorneys’

⁴ This Appendix A is not intended to be a comprehensive description of the law, a legal interpretation or legal advice. This summary is accurate as of May 2014.

fees. Civil penalties may also be imposed on health care employers that act in bad faith in taking retaliatory action in certain cases.

B. Federal Whistleblower Laws.

The federal False Claims Act provides protection to *qui tam* relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the False Claims Act. 31 U.S.C. § 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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Please note that the foregoing is not intended to be an exhaustive list of all “whistleblowers” laws and protections. Other “whistleblower” laws may also provide protections to employees or others in certain circumstances.

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Any questions about New York State or federal whistleblower laws may be directed to the Compliance Department, the Legal Department or the Human Resources Department.